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Chapter No. 471
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SENATE BILL NO. 2821

Originated in Senate



Secretary

SENATE BILL NO. 2821

AN ACT TO AMEND SECTION 77-3-705, MISSISSIPPI CODE OF 1972, TO REVISE CERTAIN DEFINITIONS AS USED IN THE MISSISSIPPI TELEPHONE SOLICITATION ACT; TO EXPAND THE DEFINITION OF "TELEPHONE SOLICITATION" TO INCLUDE TEXT MESSAGE COMMUNICATIONS, SOLICITATIONS OF A CHARITABLE CONTRIBUTION, AND SOLICITATIONS OF ITEMS OF VALUE REGARDLESS OF WHETHER A SALES PRESENTATION IS MADE; TO AMEND SECTION 77-3-711, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION 77-3-725, MISSISSIPPI CODE OF 1972, TO INCREASE THE CIVIL PENALTIES FOR VIOLATIONS OF THE ACT; TO AMEND SECTION 77-3-737, MISSISSIPPI CODE OF 1972, TO REMOVE THE REPEALER ON THE MISSISSIPPI TELEPHONE SOLICITATION ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 77-3-705, Mississippi Code of 1972, is amended as follows:

77-3-705. For the purposes of this article, the following words and terms shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Consumer" means * * * a person or business that receives a telephone call or text message from a telephone solicitor.

(b) "Caller identification service" means a type of telephone service which permits a telephone subscriber to view the telephone number and name of the person or entity making an incoming telephone call or text message.

(c) "Telephone solicitor" means any person, firm, entity, organization, partnership, association, corporation, charitable entity, or a subsidiary or affiliate thereof, who engages in any type of telephone solicitation on his or her own behalf or through representatives, independent contractors, salespersons, agents, automated dialing systems, text messaging systems, or any other machines or other individuals or systems.

(d) "Telephone solicitation" means any voice or text message communication over the telephone line or cellular network of a consumer for the purpose of:

(i) Encouraging the purchase or rental of, or investment in, property; * * *

(ii) Soliciting a sale of any consumer goods or services, or an extension of credit for consumer goods or services * * *;

(iii) Soliciting any other item of value, pecuniary or otherwise, regardless of whether a sales presentation is made; or

(iv) Soliciting a charitable contribution of money or property.

(e) "Commission" means the Mississippi Public Service Commission.

(f) "Doing business in this state" refers to businesses which conduct telephone solicitations from any location to consumers located in this state.

(g) "Consumer goods or services" means any real property or any tangible or intangible personal property which is normally used for personal, family or household purposes, including, without limitation, any property intended to be attached to, or installed in, any real property, and any services related to the property.

(h) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a consumer, with or without an exchange of consideration, on the basis of an inquiry, application, purchase or transaction by the consumer, which relationship is currently existing or was terminated within six (6) months of the telephone solicitation; however, the act of purchasing consumer goods or services under an extension of credit does not create an existing business relationship between the consumer and the entity extending credit to the consumer for such purchase. The term does not include the situation wherein the consumer has merely been subject to a telephone solicitation by or at the behest of the telephone solicitor within the six (6) months immediately preceding the contemplated telephone solicitation.

(i) "Charitable organization" means any person or entity holding itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental or conservation, civic or other eleemosynary purpose or for the benefit of law enforcement personnel, firefighters, or any other persons who protect the public safety, or for any other purpose where a charitable appeal is the basis of the solicitation.

(j) "Sales presentation" means attempting to obtain something of value, pecuniary or otherwise, regardless of whether consideration is or is expected to be exchanged.

SECTION 2. Section 77-3-711, Mississippi Code of 1972, is amended as follows:

77-3-711. The provisions of this article shall not apply to:

(a) A person soliciting:

(i) Who does not make the major sales presentation during the telephone solicitation;

(ii) Without the intent to complete or obtain provisional acceptance of a sale, a charitable contribution, or the payment of some other item of value, pecuniary or otherwise, during the telephone solicitation; or

(iii) Without the intent to complete, and who does not complete, the sales presentation during the telephone solicitation, but who completes the sales presentation at a later

face-to-face meeting between the person soliciting and the prospective purchaser or consumer.

(b) A person who is a licensee under Chapter 35, Title 73, Mississippi Code of 1972, who is a resident of the State of Mississippi, and whose telephone solicitation is for the sole purpose of selling, exchanging, purchasing, renting, listing for sale or rent or leasing real estate in connection with his real estate license and not in conjunction with any other offer.

(c) A motor vehicle dealer as that term is defined in Section 63-17-55, who is a resident of the State of Mississippi and who maintains a current motor vehicle dealer's license issued by the Mississippi Motor Vehicle Commission, whose telephone solicitation is for the sole purpose of selling, offering to sell, soliciting or advertising the sale of motor vehicles in connection with his motor vehicle dealer's license and not in conjunction with any other offer.

(d) An agent as that term is defined in Section 83-17-1 whose telephone solicitation is for the sole purpose of soliciting, consulting, advising, or adjusting in the business of insurance.

(e) A broker-dealer, agent, or investment advisor registered under Chapter 71, Title 75, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of effecting or attempting to effect the purchase or sale of securities or has

the purpose of providing or seeking to provide investment or financial advice.

(f) A person calling on behalf of a charitable organization which is registered under Chapter 11, Title 79, Mississippi Code of 1972, whose telephone solicitation is for the sole purpose of soliciting for the charitable organization and who receives no compensation for his activities on behalf of the organization.

(g) A person calling on behalf of a newspaper of general circulation, whose telephone solicitation is for the sole purpose of soliciting a subscription to the newspaper from, or soliciting the purchase of advertising by, the consumer.

(h) A person calling on behalf of any supervised financial institution or parent, subsidiary or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, small loan company, consumer finance lender, commercial finance lender or insurer, provided that the institution has a physical office located in the State of Mississippi and is subject to supervision by an official or agency of the State of Mississippi or of the United States.

(i) A person calling on behalf of a funeral establishment licensed under Section 73-11-41, cemetery or monument dealer, if the sole purpose of the telephone solicitation

relates to services provided by the funeral or death related establishments in the course of its ordinary business.

(j) Any telephone solicitor who solicits a consumer with whom he has an established business relationship.

SECTION 3. Section 77-3-725, Mississippi Code of 1972, is amended as follows:

77-3-725. The commission may investigate alleged violations and initiate proceedings relative to a violation of this article or any rules and regulations promulgated pursuant to this article. Such proceedings include, without limitation, proceedings to issue a cease and desist order, and to issue an order imposing a civil penalty not to exceed * * * Ten Thousand Dollars (\$10,000.00) for each violation. The commission shall afford an opportunity for a fair hearing to the alleged violator(s) after giving written notice of the time and place for said hearing. Failure to appear at any such hearing may result in the commission finding the alleged violator(s) liable by default. Any telephone solicitor found to have violated this article, pursuant to a hearing or by default, may be subject to a civil penalty not to exceed * * * Ten Thousand Dollars (\$10,000.00) for each violation to be assessed and collected by the commission. Each telephonic communication shall constitute a separate violation.

All penalties collected by the commission shall be deposited in the special fund created under Section 77-3-721 for the administration of this article.

The commission may issue subpoenas, require the production of relevant documents, administer oaths, conduct hearings, and do all things necessary in the course of investigating, determining and adjudicating an alleged violation.

The remedies, duties, prohibitions and penalties set forth under this article shall not be exclusive and shall be in addition to all other causes of action, remedies and penalties provided by law, including, but not limited to, the penalties provided by Section 77-1-53.

SECTION 4. Section 77-3-737, Mississippi Code of 1972, which provides for a repeal date on Sections 77-3-701 through 77-3-737, also known as the Mississippi Telephone Solicitation Act, is hereby repealed.

SECTION 5. This act shall take effect and be in force from and after July 1, 2019.

PASSED BY THE SENATE
March 28, 2019



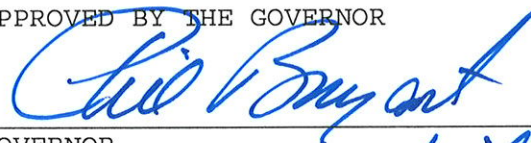
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2019



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

April 16, 2019
10:18 AM